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MAY 12
CHARLES ELMOR

IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1929.

No. 90

FRANK L. SMITH, CICERO J. LINDLY, HAL W. TROVILLION, P. H. MOYNIHAN, WILLIAM BURKHARDT, EDWARD H. WRIGHT and WILLIAM J. SMITH, the persons constituting the Illinois Commerce Commission of the State of Illinois, and OSCAR E. CARLSTROM, Attorney General of the State of Illinois,

AND

Appellants,

CITY OF CHICAGO, a Municipal Corporation,

Appellant.

vs.

ILLINOIS BELL TELEPHONE COMPANY,

Appellee,

APPEAL FROM DISTRICT COURT OF THE UNITED STATES, FOR THE NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION (3746).

STATEMENT SHOWING BASIS OF JURISDICTION AS REQUIRED BY RULE 12.

OSCAR E. CARLSTROM,
Attorney General,
State of Illinois.

SAMUEL A. ETTELSON,
Corporation Counsel,
City of Chicago.

GEORGE I. HAIGHT,
EDMUND D. ADCOCK,
BENJAMIN F. GOLDSTEIN,
Special Counsel,
Attorneys for Appellants.

BARNARD & MILLER PRINT, CHICAGO

IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1929.

No. 845

FRANK L. SMITH, CICERO J. LINDLY, HAL W. TROVILLION, P. H. MOYNIHAN, WILLIAM BURKHARDT, EDWARD H. WRIGHT and WILLIAM J. SMITH, the persons constituting the Illinois Commerce Commission of the State of Illinois, and OSCAR E. CARLSTROM, Attorney General of the State of Illinois,

AND *Appellants,*

CITY OF CHICAGO, a Municipal Corporation, *Appellant.*

vs.

ILLINOIS BELL TELEPHONE COMPANY, *Appellee,*

APPEAL FROM DISTRICT COURT OF THE UNITED STATES, FOR THE NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION (3746).

STATEMENT SHOWING BASIS OF JURISDICTION AS REQUIRED BY RULE 12.

In compliance with Rule 12 of this court, appellants state:

(a)

The basis of this court's jurisdiction is that this case was heard by the Federal Statutory Court of three judges sitting in the District Court, Northern District of Illinois, Eastern Division, under the provisions of Section 266 of the Judicial Code, as amended (Section 380 of Title 28, U. S. Code Annotated), which provides for a direct appeal to the Supreme Court from a final decree granting or denying a permanent injunction in a suit of the character of this one.

(b)

The decree herein sought to be reviewed was entered by said court on February 28, 1930 (Record Vol. 1, p. 199), and the application for the appeal to this court was presented to said court February 28, 1930 (Record Vol. 1, p. 202), and orders allowing appeal and extending time for filing transcript of record were entered on the same date. (Record Vol. 1, pp. 212, 213.)

(c)

The Illinois Bell Telephone Company filed its bill of complaint (Record Vol. 1, p. 2) in said District Court to restrain the Illinois Commerce Commission, a body duly created by the Statutes of the said State of Illinois and the Attorney General of said State from enforcing against the plaintiff certain rates for telephone service fixed for the City of Chicago by said Commission through its order of August 16, 1923. The bill alleged (Record Vol. 1, p. 6) that the rates so fixed did not afford a fair return upon the fair value, at the time of use, of its property, used and useful in and exclusively devoted to intrastate telephone service in the said City of Chicago, but that said rates were confiscatory, unfair and unreasonable, and contrary to law and void, and in violation of the plaintiff's rights under the 14th Amendment to the Constitution of the United States.

The City of Chicago was given leave to intervene by an order entered September 27, 1923. (Record Vol. 1, p. 49.)

An interlocutory decree was entered December 21, 1923 (Record Vol. 1, p. 163), from which an appeal was taken to this court and said interlocutory decree was affirmed October 19, 1925 (Record Vol. 1, pp. 167-169) *Smith, et al.* v. *Illinois Bell Telephone Co.*, 70 L. Ed. 397, 269 U. S. 531.

The said Commission's order of August 16, 1923, appears in Record Vol. 1, pp. 14 to 46. The court's opinion, ren-

dered on final hearing January 31, 1930, is found in Record Vol. 1, p. 178.

The final decree (Record Vol. 1, p. 199) held that the telephone rates prescribed for the City of Chicago by the said Illinois Commerce Commission's order of August 16, 1923, were confiscatory and deprived plaintiff of its property without due process of law, and denied to the plaintiff equal protection of the law under the Federal Constitution.

(d)

The jurisdiction of this court is sustained by the said statutory provision granting direct appeal from the order of the District Court in such case (Section 266 of Judicial Code; Title 28, Section 380, U. S. Code Annotated).

Interstate Busses Corporation v. *Blodgett*, 48 S. Ct. 230, 276 U. S. 245, 72 L. Ed. 551.

P. H. MOYNIHAN,
FRANK L. SMITH,
CICERO J. LINDLEY,
HAL W. TRAVILLION,
WILLIAM BURKHARDT,
EDWARD J. WRIGHT,
WILLIAM J. SMITH,
Constituting Illinois Commerce Commission, Appellants.

OSCAR E. CARLSTROM,
Attorney General of the State of Illinois.

CITY OF CHICAGO,
Appellant.

By SAMUEL A. ETTELSON,
Corporation Counsel,

and

GEORGE I. HAIGHT,
EDMUND D. ADCOCK,
BENJAMIN F. GOLDSTEIN,
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